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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,574	02/19/2004	Marvin P. Loeb	Loeb.M-04	7719
22197	7590	01/17/2006		
GENE SCOTT; PATENT LAW & VENTURE GROUP 3140 RED HILL AVENUE SUITE 150 COSTA MESA, CA 92626-3440				
			EXAMINER KASZTEJNA, MATTHEW JOHN	
			ART UNIT 3739	PAPER NUMBER

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,574

Applicant(s)

LOEB ET AL.

Examiner

Matthew J. Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

In response to the amendment filed on November 9, 2005, cancelled claims 1-33 and new claims 34-39 are acknowledged. The current rejections are *withdrawn*. The following new grounds of rejection are set forth:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "about" in claim 35 is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 34-36 and 38-39 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,607,526 to Maki.

In regards to claim 34, Maki discloses an apparatus comprising an optical fiber 107 having a buffer coating 108 thereon except for a distal end portion thereof encased within a capillary tube 104; a terminal end surface of the distal end portion beveled at an angle (see Col. 3, Lines 22-26); the optical fiber coaxial within a first tubular enclosure 101; the capillary tube providing an air interface with the first tubular enclosure enabling total internal reflection of a laser energy in the optical fiber; a port 150 within first tubular enclosure is positioned adjacent to the distal end portion for disbursing the laser energy through the port over an angular range of between about 70° to 90° with respect to an axis of the optical fiber (see Figs. 1-2).

In regards to claim 35, Maki discloses an apparatus further comprising a reflective 151 insert disposed adjacent to the capillary tube and extending over an angular range of from about 90° to 240° a position for reflecting back-scattered energy (see Fig. 2 and Col. 3, Lines 50-67).

In regards to claim 36, Maki discloses an apparatus further comprising a liquid infused into the first tubular enclosure for cooling the capillary tube and for flushing debris from the enclosure (see Col. 4, Lines 35-43).

In regards to claims 38-39, Maki discloses an apparatus wherein the beveled angle of the distal end portion is between 38°- 42° (see Col. 3, Lines 22-26).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 37 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 6,607,526 to Maki in view of U.S. Patent No. 6,132,422 to Rudko.

In regards to claim 34, Maki discloses a laser treatment apparatus but is silent with respect to a gas infused into the tubular enclosure for displacing liquid within the first tubular enclosure. Rudko teaches of an analogous laser system having a means for focusing a laser beam proximate to the aperture to vaporize the tissue of the heart wall to create a hole to the interior of the heart chamber. In a preferred embodiment the handpiece further includes means for introducing a gas to purge the passage, between the aperture and the means for focusing, of debris from the vaporized heart wall (see Col. 2, Lines 23-45). It would have been obvious to one skilled in the art at the time the invention was made to infuse a gas into the tubular enclosure in the apparatus of Maki to ensure the enclosure is free of debris as taught by Rudko.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

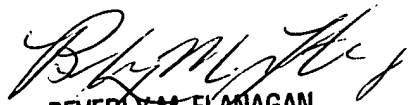
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK

mk

1/10/06


BEVERLY M. FLANAGAN
PRIMARY EXAMINER